



December 7, 2018

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Via EPA's Online Request Form at
<https://foiaonline.regulations.gov/foia/action/public/home>

Records, FOIA, and Privacy Branch
Office of Environmental Information
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue (2822T), NW
Washington, DC 20460

Re: **Freedom of Information Act Request**

Dear Sir/Madam:

Advisory Council

Patricia Bauman
Frances Beinecke
Eula Bingham
W. Thompson Comerford, Jr.
Sally Greenberg
John Passacantando
Henry Waxman
Robert Weissman

On behalf of the Center for Progressive Reform (CPR) and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, I write to request that the Environmental Protection Agency ("EPA") provide copies of the records described below.

CPR is a network of more than 50 acclaimed legal scholars from across the United States who work with a professional staff of policy analysts and communications experts to advocate for robust public protections. Our legal and policy research is integral to the progressive movement, supporting environmental, labor, and consumer protection advocates.

CPR requests the following records:

1. All written communications, regardless of format, exchanged between or among personnel employed within the EPA's Office of Policy (OP) regarding the development of the advanced notice of proposed rulemaking (entitled "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process" (RIN: 2010-AA12) [hereinafter "Cost-Benefit Analysis ANPRM"], which shall include at a minimum all electronic correspondence, written correspondence, word processing documents, PowerPoint presentations, databases, computer programs, and messages sent through texting software programs or applications.

2. Records concerning all substantive oral communications between or among personnel employed within the EPA's OP regarding the development of the Cost-Benefit Analysis ANPRM, including the names of individuals involved, dates on which the oral communications occurred, and any written materials, regardless of format, produced in advance of the oral communications, during the course of the oral communications, and in response to the oral communications. The substantive oral communications shall include at a minimum all meetings (whether in-person or remote) and phone calls.
3. All written communications, regardless of format, exchanged between or among personnel employed within the EPA's OP and personnel employed within the EPA's Office of the Administrator Immediate Office regarding the development of the advanced notice of proposed rulemaking Cost-Benefit Analysis ANPRM, which shall include at a minimum all electronic correspondence, written correspondence, word processing documents, PowerPoint presentations, databases, computer programs, and messages sent through texting software programs or applications.
4. Records concerning all substantive oral communications between or among personnel employed within the EPA's OP and personnel employed within the EPA's Office of the Administrator Immediate Office regarding the development of the Cost-Benefit Analysis ANPRM, including the names of individuals involved, dates on which the oral communications occurred, and any written materials, regardless of format, produced in advance of the oral communications, during the course of the oral communications, and in response to the oral communications. The substantive oral communications shall include at a minimum all meetings (whether in-person or remote) and phone calls.
5. All written communications, regardless of format, exchanged between or among personnel employed within the EPA's OP and personnel employed within the EPA's Office of General Counsel (OGC) regarding the development of the advanced notice of proposed rulemaking Cost-Benefit Analysis ANPRM, which shall include at a minimum all electronic correspondence, written correspondence, word processing documents, PowerPoint presentations, databases, computer programs, and messages sent through texting software programs or applications.
6. Records concerning all substantive oral communications between or among personnel employed within the EPA's OP and personnel employed within the EPA's OGC regarding the development of the Cost-Benefit Analysis ANPRM, including the names of individuals involved, dates on which the oral communications occurred, and any written materials, regardless of format, produced in advance of the oral communications, during the course of the oral communications, and in response to the oral communications. The substantive oral communications shall include at a minimum all meetings (whether in-person or remote) and phone calls.
7. All written communications, regardless of format, exchanged between or among personnel employed within the EPA's OP and persons not employed by the executive branch of the Federal Government regarding the development of the advanced notice of proposed rulemaking Cost-Benefit Analysis ANPRM, which shall include at a minimum all electronic correspondence, written correspondence, word processing documents,

PowerPoint presentations, databases, computer programs, and messages sent through texting software programs or applications.

8. Records concerning all substantive oral communications between or among personnel employed within the EPA's OP and persons not employed by the executive branch of the Federal Government regarding the development of the Cost-Benefit Analysis ANPRM, including the names of individuals involved, dates on which the oral communications occurred, and any written materials, regardless of format, produced in advance of the oral communications, during the course of the oral communications, and in response to the oral communications. The substantive oral communications shall include at a minimum all meetings (whether in-person or remote) and phone calls.

Pursuant to FOIA, the EPA is under a strong obligation to release all of these documents. This obligation is further strengthened by the January 21, 2009, presidential memorandum on FOIA establishing a presumption in favor of disclosure.¹

Exempt Records

If you regard any of the requested records to be exempt from required disclosure under FOIA, I request that you disclose them nevertheless, as such disclosure would serve the public interest of educating citizens about the EPA's operations in carrying out its statutory mission of protecting public health and environmental integrity.

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for CPR to appeal the denial. To comport with legal requirements this information must include:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of the records requested are exempt from disclosure, please segregate the exempt portions and deliver the remaining records within the statutory time limits after the exempted material has been redacted from the records CPR is seeking.

Fee Waiver Request

CPR requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii), because disclosure of this information is likely to contribute significantly to public understanding of operations or activities of the government and will not further any commercial interest. In particular, the requested records will contribute significantly to the public understanding of how the EPA develops policies related to protection of public health and environmental integrity in accordance with its congressionally

¹ Memorandum from President Barack Obama for the Heads of Executive Departments and Agencies (Jan. 21, 2009), available at <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>.

outlined authorities, and the extent to which economic considerations are properly or improperly accounted for as part of such policy development. Greater public understanding of the regulatory process is important, because the public is affected by federal regulations, including those issued and enforced by the EPA, every day. In addition, this enhanced understanding of the regulatory process will enable the public to participate more effectively in the EPA's future rulemaking activities, such as through the Administrative Procedure Act's notice-and-comment rulemaking process.

Moreover, CPR is a nonprofit organization specializing in the legal, economic, and scientific issues that surround federal regulation. CPR works to advance the public's understanding of the issues addressed by the country's regulatory laws. In particular, CPR seeks to educate the public and policymakers about how the government's authority and resources may best be used to preserve collective values and to hold accountable those who ignore or trivialize them.

Consistent with its organizational mission, CPR intends to use the requested records to educate the public about EPA's development of regulatory policies for public health and environmental protections. After analyzing and synthesizing the information contained in these records, CPR will report its findings to the public through a variety of media, including white papers, books, and Internet articles. CPR has the unique expertise and experience to analyze and educate the public about these kinds of regulatory policy matters.

Records Delivery

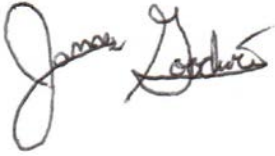
CPR requests that the EPA, in responding to this request, comply with all relevant deadlines and other obligations set forth in FOIA and the agency's regulations.

Please produce the records above in a timely manner by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for – or the deliberation concerning – certain records delay the production of others that the agency has already retrieved and elected to produce.

James Goodwin
jgoodwin@progressivereform.org
The Center for Progressive Reform
2021 L St, NW
#101-330
Washington, DC. 20036

Thank you for your cooperation. If you find that this request is unclear in any way, please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 202-747-0698, ex. 5, or by e-mail at jgoodwin@progressivereform.org.

Sincerely,

A handwritten signature in dark ink, appearing to read "James Goodwin". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "Goodwin".

James Goodwin, J.D., M.P.P.

Senior Policy Analyst, Center for Progressive Reform